



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/664,462	09/18/2000	Paul R. Mathewson	0313.MATH.CN1	4305

26986 7590 05/12/2003

MORRISS O'BRYANT COMPAGNI, P.C.
136 SOUTH MAIN STREET
SUITE 700
SALT LAKE CITY, UT 84101

2

EXAMINER

LEWIS, KIM M

ART UNIT	PAPER NUMBER
----------	--------------

3761

DATE MAILED: 05/12/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/664,462

Applicant(s)

MATHEWSON, PAUL R.

Examiner

Kim M. Lewis

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/10/03 and.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-21 is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☒ Claim(s) 2 and 4-17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 19 February 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Detailed Action.

DETAILED ACTION

Response to Amendment

1. The amendment filed on 2/10/03 has been received and made of record in the application file wrapper. The specification and claims 4, 5 and 11 have been amended as requested. Claim 3 is intended to be canceled. Please formally request cancellation of claim 3. The examiner will not act on claim 3 since it is intended to be canceled by the amendment of 2/10/03. Claim 21 has been added. Claims 1, 2 and 4-21 are pending in the instant application.

Drawings

2. The corrected or substitute drawings were received on 2/19/03. These drawings are approved by the examiner.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are:
securing/attaching the bracing member to the bracing member support. In order for the method to be complete and to limit axial rotation and translation in a joint, the bracing member must be attached to bracing member support.

Art Unit: 3761

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,805,781 ("Hoey").

As regards claim 1, Hoey discloses an extensible supporting bandage, thereby being length adjustable. As can be seen from the figure, the bandage has a proximal end for positioning on one side of the ankle joint and a distal end for positioning on a second side of the ankle joint along a longitudinal axis formed therethrough.

The bandage also comprises a circumferentially spiraling distance extending between the proximal end and the distal end to define a circumference oriented about the joint from the proximal end to the distal end.

The applicant should note that the bandage is ***capable*** of providing active resistance to axial rotation and translation to the ankle joint when the defined circumference changes in response of a change in the position of the proximal end relative to the distal end.

Allowable Subject Matter

7. Claims 2 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claim 20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

9. Claims 5-19 and 21 are allowed.

10. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach or fairly suggest to one of ordinary skill in the art an orthopedic brace for actively resisting axial rotation and translation in a joint comprising a first bracing member support and/or a second bracing member support, and at least one circumferentially spiraling bracing member.

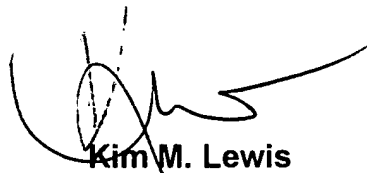
11. The prior art also fails to teach an orthopedic brace comprising an undersleeve sized to encircle at least a portion of a wearer's body and to extend from one side of a joint to the other side of the joint, said undersleeve having a proximal edge positioned on one side of a joint and a distal edge positioned on the other side of the joint; and at least one circumferentially spiraling, longitudinally inelastic bracing member having a proximal end and a distal end attached to said undersleeve in proximity to the proximal edge and distal edge, respectively, of the undersleeve to define a circumferentially spiraling distance from said proximal end to said distal end thereof.

Art Unit: 3761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is 703.308.1191. The examiner can normally be reached on Mondays and Tuesdays from 6:30 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703.308.1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703.305.3590 for regular communications and 703.305.3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.0858.



Kim M. Lewis
Primary Examiner
Art Unit 3761

kml
April 29, 2003